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May 10, 2012

## By Email and U.S. Mail

Gloria Moran, Esq.  
Assistant Regional Counsel  
Superfund Branch (6RC-S)  
U.S. EPA, Region 6  
1445 Ross Ave.  
Dallas, TX 75202-2733

### Re: Arkwood Superfund Site, near Omaha, AR

Dear Ms. Moran:

We have recently received the first collection of documents provided by U.S. EPA in response to McKesson's Freedom of Information Act request for correspondence between U.S. EPA and C.C. ("Bud") Grisham, Sr. and C.C. ("Curt") Grisham, Jr. regarding the Arkwood Site ("Site"). We are disturbed by the extensive record of communications between the agency and Curt Grisham,<sup>1</sup> largely to the exclusion of McKesson, regarding, among other matters: 1) the proper scope of institutional and engineering controls at the Site (including deed restrictions); 2) development of a Ready for Reuse Determination for the Site; and 3) the Site's potential partial delisting from the National Priorities List ("NPL"). We write, among other reasons, to obtain confirmation from U.S. EPA Region 6 that going forward, McKesson will be included in all discussions regarding any of these topics before any decisions are made, and will not be excluded from meetings regarding them.

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<sup>1</sup> We note that Curt Grisham, who, to our knowledge, has never presented U.S. EPA with any written evidence of his legal authority to act on behalf of the Site owner, nonetheless has been referred to and treated by U.S. EPA as if he is so authorized. If you have any such evidence, please provide it to us immediately. We have recently provided you with written evidence from his father, "Bud" Grisham, indicating his son Curt acts only on his own behalf. As you know, by Don Smith's letter 4/17/12 on which you were copied, McKesson requested Bud Grisham's assistance in confirming to you that his son, Curt Grisham, has no legal authority to act on his behalf or on behalf of the Site owner. Bud Grisham has refused to do so by the April 30 deadline we provided, leaving his earlier denial of any such authority as the only evidence on this subject. Accordingly, until Bud or Curt Grisham provides written proof of Curt Grisham's legal authority to act on behalf of the Site owner to you and to us, we request that you cease treating Curt Grisham as having such legal authority.

By way of background, McKesson's predecessor Mass Merchandisers, Inc. ("MMI") commenced a Remedial Investigation/Feasibility Study in May 1987, 25 years ago and subsequently entered into a Consent Decree ("CD") with U.S. EPA to implement the remedial action identified in the Record of Decision ("ROD") issued by U.S. EPA in September 1990. McKesson, MMI's successor in interest, has been remediating the Site ever since. McKesson has spent in excess of \$20 million to date on soil and groundwater remediation since execution of the Settlement Agreement with the Site owners (including Bud Grisham) and the former operators, so it has a vested interest in making sure its costly and ongoing remedial efforts are protected and retain their long-term effectiveness. Per the CD, Jean Mescher is the designated Project Coordinator for MMI to monitor progress of the work and "to coordinate communication between Parties." (see CD, Section XII, "Project Coordinators.") Accordingly, McKesson expects that before U.S. EPA Region 6 contemplates taking ANY action affecting the completion of the remedial work under the CD, or the ROD, which is incorporated into the CD, including but not limited to recording deed restrictions or other institutional controls, pursuing a Ready for Reuse Determination, or initiating any effort to partially delist the Site from the NPL, that Region 6 would provide timely and detailed communication to McKesson's Project Coordinator.

The documents recently produced in response to Mr. Don Smith's FOIA request demonstrate rather shockingly that such communications have not occurred, with Region 6 instead having repeated, unilateral communications with Curt Grisham on each of these issues with little or, in most cases, no communication with McKesson's Project Coordinator. Indeed, the documents reflect that Mr. Grisham specifically requested that McKesson not be informed at all about the November 9, 2011 "Meeting with Curt Grisham" at which numerous topics directly relevant to the CD and ROD were discussed. (see C. Grisham October 20, 2011 email to C. Luckett-Snyder, U.S. EPA-- "Can you confirm that the meeting will take place without any McKesson participation?") It is disturbing and unacceptable to McKesson that Region 6 apparently honored this request to keep McKesson's Project Coordinator, with whom U.S. EPA is supposed to coordinate communications regarding the Site, completely ignorant of this meeting and the wide array of CD- and ROD-related issues reflected in the meeting agenda prepared by Region 6.

McKesson understands the Site owner's desire to return it to economic use, but that desire must not interfere with McKesson's legal obligation to complete and protect the Site's remediation. As noted on EPA's own website entry regarding the Site, "[a] Site Preliminary Closeout Report was finalized on June 28, 1996 to officially complete the Soils Remedy. EPA and ADEQ considered a partial NPL deletion for the main Site area. However, they determined that unrestricted use of the main Site could not occur until the RP has completed cleanup of the New Cricket Spring, as this might re-contaminate New Cricket Spring due to the fractured hydrogeology at the site."

Although McKesson has made great progress (at great expense) towards remediation of the Site consistent with the remedial goals set in the Site's ROD, including completion of soil remediation and the implementation of ozone water injections to accelerate groundwater remediation, groundwater quality still does not meet regulatory standards on a consistent basis, so the need for treatment continues, along with continued protection of past soil remedial efforts, including the soil cap. Accordingly, McKesson requests the following actions from Region 6.

1. Deed Restrictions.

McKesson requests that U.S. EPA actively involve it, through its designated Project Coordinator, in all discussions involving amendments to the existing deed restrictions. We have reviewed your pair of November 18, 2011 emails to Mr. Grisham, Jr. and your comment that U.S. EPA will revise the current deed notice "with input from McKesson" to "insure it reflects the metes and bounds and the uses that are legally appropriate for the site", and that McKesson will be entitled to make comments on the revised draft Deed Restriction. McKesson looks forward to timely receipt of all proposed draft revisions to the Deed Restriction and to providing to Region 6 relevant comments to insure the final recorded version complies fully with all requirements of all relevant administrative documents, including the ROD, which provides that a deed notice will be recorded "warning against future excavation on the Site." (ROD, p. 52.) The currently recorded deed restriction does not provide any such warning, despite McKesson's prior request for language to be included explaining the residual risk; the purpose of the cap being to prevent direct contact; and the need to protect the cap.

2. Ready for Reuse.

McKesson was surprised to learn in Region 6's Third Five Year Report that "[i]n January 2011, EPA made a site-wide Ready for Reuse determination at the Arkwood Site" without any advance notice to McKesson whatsoever. Moreover, we are confused as to how this determination was made without any supporting process or documentation reflecting that Region 6 had conducted its normal technical administrative review to insure that the Site was in fact determined to be "Ready for Reuse." Our confusion is magnified by our review of Ms. Luckett-Snyder's emails to Mr. Curt Grisham (again, without any communication to McKesson's Project Coordinator), including her November 9, 2011 email to him providing the "Conroe Creosoting RfR Certificate, the RfR Executive Summary and the main body of the RfR," and asking him to let her know if he is "interested in pursuing this avenue." This email was followed by her November 22, 2011 email to him stating that "I've initiated the process to start developing a Ready for Reuse Determination for the site as you requested last week." Apart from the fact that Region 6 is discussing pursuit of this determination with a person who has no demonstrated legal authority to act on behalf of the Site owner without any notice to the Site Project Coordinator, this email makes clear that EPA has not yet made a "Ready for Reuse" determination at the Arkwood site. Indeed, it has only just initiated the determination process.

Typically, as reflected in the Conroe Creosoting RfR sent by Ms. Luckett-Snyder to Mr. Grisham, such determinations are based on analysis presented in a technical decision document discussing the remedies implemented and the institutional and engineering controls and O&M requirements required for the remedies to remain protective of human health and the environment. (See also LEDC Parcels of Land at the South Point Plant Superfund Site Are Ready for Reuse, U.S. EPA Region 5 (10/26/04)).

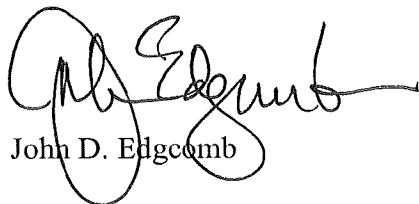
McKesson makes two requests with respect to U.S. EPA's Ready for Reuse program as it applies to the Site. First, McKesson requests a written statement from Region 6 that it has *not* made a site-wide Ready for Reuse determination at the Arkwood Site, since it never conducted the required determination process or generated the appropriate supporting documentation. Moreover, McKesson requests that if Region 6 continues pursuing a Ready for Reuse determination for the Site, that it: 1) complete the required analysis and documentation supporting it, fully identifying all the institutional and engineering controls and other requirements with which compliance remains necessary during any proposed reuse to protect the remedy; and 2) fully involves and affirmatively seeks the input of McKesson's Project Coordinator in that process.

3. Delisting from the NPL.

As with the deed restriction and Ready for Reuse issues, as the only responsible Party to the CD, and the party responsible for implementing the remedy at the Site, McKesson expects to be fully involved in all administrative decision-making regarding any steps taken toward removing the soil portion of the Site from the NPL. We have reviewed Carlos Sanchez's November 25, 2011 email to Mr. Curt Grisham (who, again, has not demonstrated legal authority to act on behalf of the Site owner) stating that based on a letter from him, Region 6 is moving forward with the partial NPL delisting process for the Site. We cannot understand why such actions are being taken without any notice to the Site Project Coordinator from McKesson, the party that has been investigating and remediating the Site under the CD with U.S. EPA for the last 25 years at a cost of over \$20 million and remains responsible for completing and preserving the Site remedy under the terms of the CD.

We think it is appropriate to have a meeting in Dallas to discuss the above items, among other issues. Please let us know when would be a convenient date to meet in June or July. Thank you for your consideration. We look forward to working cooperatively with U.S. EPA Region 6 to complete remediation of this Site and to protect the remedy implemented.

Very truly yours,



John D. Edgcomb

Gloria Moran, Esq.  
U.S. EPA, Region 6  
May 10, 2012  
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cc: Carlos Sanchez, U.S. EPA, Region 6, Chief, AR/TX Section  
Casey Luckett Snyder, U.S. EPA, Region 6, Site Reuse Coordinator  
Stephen Tzhone, U.S. EPA, Region 6, Arkwood Site RPM  
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